

DOCUMENT NUMBER: 09-EUC-0012
PROJECT NUMBER: C3-011-72105
PROPERTY CATEGORY: 2

State of Kansas Cherokee County Register
of Deeds Christy Grant
Book: 420 Page: 114
Receipt #: 15697
Pages Recorded: 9
Cashier Initials: BSB
Date Recorded: 4/15/2010 9:26:49 AM
Total Fees: \$40.00

ENVIRONMENTAL USE CONTROL AGREEMENT

MFA Enterprises, Inc., a Missouri corporation, having a mailing address of 201 Ray Young Drive, Columbia, Missouri 65201, hereinafter referred to as "the Owner", is the owner of real property known as the Former Cash Grain – Weir Site at 307 South Lincoln Street, in Weir, Cherokee County, Kansas, as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal descriptions:

TRACT I: Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), and Sixteen (16), in Block Nine (9) in First Addition to the City of Weir, Cherokee County, Kansas, according to the recorded plat thereof, Except mineral reservations of record.

TRACT II: Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), and Twenty-eight (28), in Block Twelve (12), of Vogel's Addition to the City of Weir, Cherokee County, Kansas, according to the recorded plat thereof.

TRACT III: The South Half (S/2) of Lot Twenty-one (21), and all of Lots Twenty-two (22), Twenty-three (23), Twenty-four (24), and Twenty-five (25), in Block Seven (7), of Vogel's Addition to the City of Weir, Cherokee County, Kansas, according to the recorded plat thereof.

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2007 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE's approval of the application are as follows:

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The Property has been used as an active agriculture fertilizer/pesticide storage and sales facility since 1971. Total nitrate plus ammonia, alachlor, cyanazine and arsenic remain at concentrations exceeding KDHE's corresponding soil cleanup guidelines as established in the *Risk-Based Standards for Kansas RSK Manual – 4th Version* (June 2007) for either the soil or soil-to-groundwater pathway. Excavations and proper disposal for all accessible soils impacted by total nitrate plus ammonia above 200 milligrams per kilogram were conducted in 2009. Complete remediation of nitrate-impacted soils was impractical due to the existing pavement and structures on the Property. Excavated areas were backfilled and compacted with approved material to two feet below the ground surface. Approximately one and one-half feet of aggregate was placed above the backfill followed by a six-inch concrete cover.

The perched groundwater above the impermeable bedrock was determined to be non-potable water in terms of poor natural groundwater quality and limited groundwater yield for potential use. However, KDHE requires continued groundwater monitoring through the Voluntary Cleanup and Property Redevelopment Program due to concentrations of nitrate and total petroleum hydrocarbons in the diesel range identified above the corresponding primary maximum contaminant levels as promulgated by the federal Safe Drinking Water Act or KDHE's groundwater pathway screening values, respectively.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2007 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2007 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2007 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Cherokee County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

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- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The Owner shall not allow shallow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- C. The Owner shall consult with KDHE during planning of any installation of deep-water wells on the Property and shall obtain prior written approval from KDHE before drilling any deep-water wells. Well construction will be engineered to prevent contamination of any underlying deep aquifer from any contaminated perched groundwater.
- D. The Owner acknowledges that structural impediments (i.e., pavement and structures) existing at the time of cleanup made complete remediation of the soil contamination on this Property impracticable. If the structural impediments on this Property are removed or modified in such a manner as to provide for exposure to any remaining contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal or modification of such structural impediments. KDHE may require soils underlying the structural impediments be tested to determine any additional hazards to human health and the environment from the exposed soil. Based on the potential hazards associated with the exposed soil as determined by KDHE, KDHE may require specific protective or remedial actions to prevent future impacts to human health and the environment.
- E. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities. KDHE may require sampling of soils prior to, during or after any excavation activities. Based on the potential hazards associated with the soil disturbance activities, KDHE may require specific protective or remedial actions when allowing such soil disturbance activities to occur on the Property.
- F. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- G. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.

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- H. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks and all environmental monitoring stations that may be installed on the Property.

LOCAL ORDINANCES AND ZONING:

There is no zoning department for Weir, Kansas; therefore there is no zoning classification for the Property.

ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

FUNDING:

The Owner hereby agrees to submit to KDHE a one-time payment of \$10,000 to compensate KDHE for costs incurred to perform inspections, monitoring, and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, types of protective structures at the Property, frequency of KDHE's anticipated inspections and anticipated inspection costs.

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2007 Supp. 65-1,227.

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MONITORING AND INSPECTION REQUIREMENTS:

Groundwater monitoring, currently overseen by the KDHE-Bureau of Environmental Remediation under the auspices of the Voluntary Cleanup and Property Redevelopment Program, is conducted under a Voluntary Agreement (06VCP0004) mutually agreed to by MFA Enterprises, Inc. and KDHE in 2006.

KDHE shall visually inspect the Property once every five (5) years documenting the condition of the protective cover(s) and current uses of the Property to verify the Property is being used as indicated herein. KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data.

MAINTENANCE REQUIREMENTS:

The Owner hereby agrees to provide maintenance of the structural impediments (i.e., existing pavement and structures) to prevent exposure to human health and the environment. Maintenance includes, but is not limited to, inspection, weed control, sealing, resurfacing, concrete/asphalt replacement and any other repairs to the protective structures. Such repairs may be necessary to correct the effects of settlement, heaving, erosion, or other events including widening of cracks or other openings, which may provide potential exposure to contaminated subsurface soils.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2007 Supp. 65-1,227(e).

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This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Cherokee County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2007 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

EFFECTIVE DATE OF AGREEMENT:

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Cherokee County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2007 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

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IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 5th day of April, 2010.

Kansas Department of Health and Environment

By: *Roderick L. Bremby*

Roderick L. Bremby, Secretary

ACKNOWLEDGMENT:

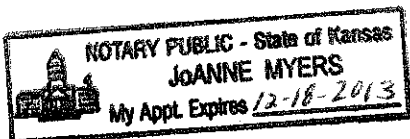
STATE OF KANSAS)
)ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 5th day of April, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of KDHE, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

Joanne D. Myers
Notary Public in and for said County and State

My Term Expires: 12-18-2013



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Corporation: **MFA Enterprises, Inc.**

By: J. Brian Griffith

Date: April 7, 2010

Print Name: J. Brian Griffith

Title: Vice-President

ACKNOWLEDGMENT:

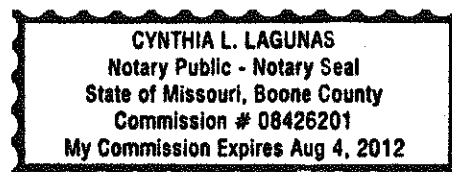
STATE OF MISSOURI
)ss:
 COUNTY OF BOONE

BE IT REMEMBERED, on this 7th day of April, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came J. Brian Griffith, authorized representative of MFA Enterprises, Inc., who is personally known to be such person who executed the above document on behalf of said corporation, and such person duly acknowledged the execution of the same to be his/her act and deed.

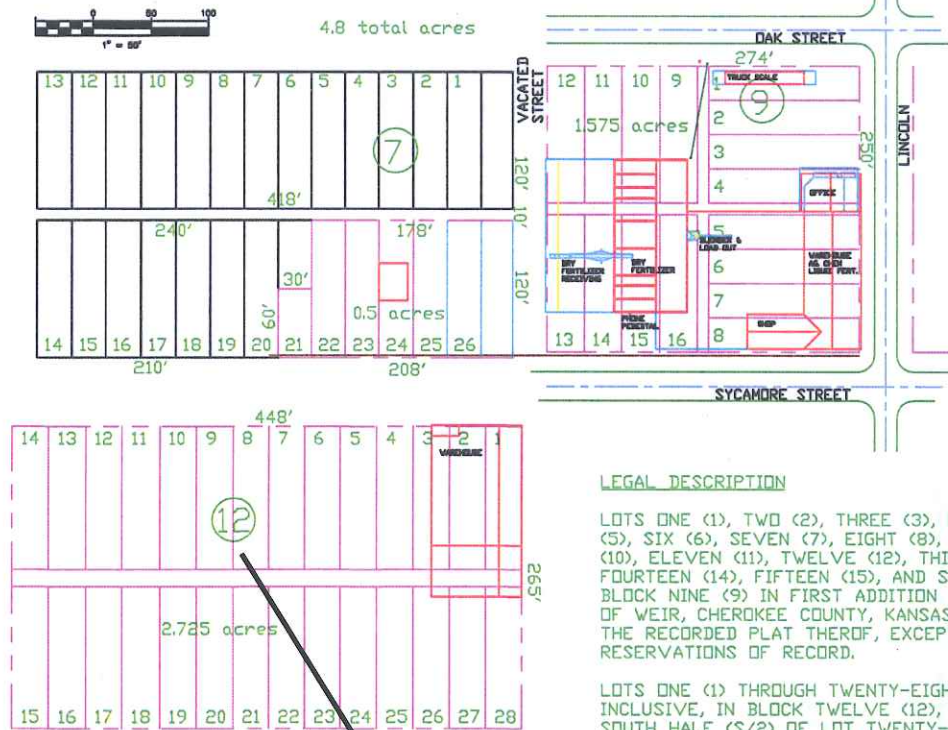
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Boone County, Missouri, the day and year last written above.

Cynthia L. Lagunas
 Notary Public in and for said County and State

My Term Expires: Aug 4, 2012



Lot map provided by Barker Lemar Engineering Consultants.



0 100 200 400 Feet



Map Prepared by KDHE

LEGEND

- Local Roads
- EUCA Area Boundary (approximate)

Exhibit A

Former Cash Grain - Weir
Weir, Kansas
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In Sec. 34, T31S, R24E